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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID MARISCAL,

Petitioner,

vs.

DIRECTOR HOWARD SKOLNIK,, *et al.*,

Respondents.

3:07-cv-0296-LRH-VPC

ORDER

This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254, by David Mariscal, a Nevada prisoner. On May 20, 2009, this Court granted respondents' motion to dismiss in part, and found grounds two (1), two (4), three, four, five, six, and seven unexhausted (docket #37). Petitioner elected to abandon those claims (docket #39). Respondents have answered the remaining claims contained in the petition for writ of habeas corpus (docket #41).

Before the Court is petitioner's motion to stay the proceedings and request to file a traverse to the state's answer (docket #42 and #43). Petitioner asks this Court to stay the proceedings, as he filed a second petition for writ of habeas corpus in the state district court, and will want to file this new claim in the instant action. *Id.* Respondents oppose the motion for stay and for leave to file a traverse. The Court will deny the motions in part. Petitioner has not shown that he is entitled to a stay of the proceedings merely because he has now filed a new action in the state district court. Moreover, if petitioner wishes to file a new claim, and amend his petition, he would have to

1 seek leave of the court as respondents have filed a responsive pleading in this action. Fed. R. Civ. P.
2 15(a)(1)-(2). To the extent that petitioner seeks leave of the court to file a traverse to respondents'
3 answer, the court will grant the motions, and allow petitioner thirty days to file a traverse.

4 Also before the Court is petitioner's second motion for appointment of counsel
5 (docket #38). This Court previously denied a motion for appointment of counsel (docket #7). There
6 is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania*
7 *v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The
8 decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th
9 Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.),
10 *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the
11 case are such that denial of counsel would amount to a denial of due process, and where the
12 petitioner is a person of such limited education as to be incapable of fairly presenting his claims. See
13 *Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970).

14 The petition on file in this action is organized and raises the issues in a clear and
15 understandable manner. The issues do not appear to be overly complex. It does not appear that
16 counsel is justified in this instance. The motion shall be denied.

17 **IT IS THEREFORE ORDERED** that petitioner's motions to stay the proceedings
18 and request for leave to file a traverse (docket #42 and #43) are **GRANTED IN PART AND**
19 **DENIED IN PART**. The Court will not grant a stay of the proceedings. However, the Court will
20 grant petitioner additional time to file a traverse. Petitioner shall have up to, and including, **October**
21 **26, 2009**, to file a traverse to respondents' answer.

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1 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel
2 (docket #38) is **DENIED**.

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4 DATED this 24th day of September, 2009.

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7 UNITED STATES DISTRICT JUDGE
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